

804 KAR 6:020. Advisory opinions.

RELATES TO: KRS 241.020, 241.060

STATUTORY AUTHORITY: KRS 241.020(1), 241.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations governing procedures relative to the matters over which the board has jurisdiction. KRS 241.020(1) authorizes the department to issue advisory opinions and declaratory rulings related to KRS Chapters 241 to 244 and the administrative regulations promulgated under those chapters. This administrative regulation establishes the procedures and requirements for requesting advisory opinions and the process utilized by the department in responding to those requests.

Section 1. Definitions. (1) "Advisory Opinion" means a ruling by the Department that addresses questions or issues properly submitted for consideration as required by Sections 2, 3, and 7 of this administrative regulation.

(2) "Department" is the Department of Alcoholic Beverage Control as defined by KRS 241.010(21).

(3) "Person" is defined by KRS 446.010(33).

Section 2. Request for Advisory Opinion. (1) Any person may request, in writing, an advisory opinion concerning the application and interpretation of alcoholic beverage control statutes and administrative regulations with regard to a particular act or transaction that the requestor is taking or plans to take. Requests presenting a general question of interpretation, posing a hypothetical situation, involving the activities of third parties, or that implicate the subject of an investigation, pending case, or disciplinary action, shall not be considered.

(2) The department may issue an advisory opinion on its own initiative.

Section 3. Form of Request. (1) The request shall be submitted on the Advisory Opinion Request Form and contain the following:

(a) A clear and concise statement of all facts relevant to the request;

(b) Citation to all applicable and relevant statutes, administrative regulations, decisions, orders, other written statements of law or interpretation, or any other persuasive or controlling authority that relates to the request;

(c) A clear and concise statement of each and every question to be addressed;

(d) The requestor's proposed response to each question presented, including a summary of the rationale for the proposed response;

(e) Any documentation, research, or other evidence related to the request; and

(f) A statement indicating whether, to the requestor's knowledge or belief, the requested questions or issues is pending before, under investigation by, or recently determined by any court of law or governmental entity.

(2) The request shall be signed by one (1) or more persons, with each signer's mailing address, telephone number, and email address clearly indicated. If a person signs on behalf of a corporation, limited liability company, association, or any other legal entity, the name of the entity, the address, telephone number, and email address of the entity or point of contact shall be included. The signer shall date the request.

(3) The request shall be submitted by mail or by email to the Commissioner of the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, email abc.advisory@ky.gov.

(4) If the request is deficient under Section 2 or 3 of this administrative regulation, the re-

requesting person shall be notified of the deficiency within ten (10) business days of receipt.

(5) If the request meets the criteria of Sections 2 and 3 of this administrative regulation, the department shall assign the request an advisory opinion request (AOR) number and publish the request on the department's Web site.

Section 4. Consideration. (1) The department may schedule an informal meeting between the requestor, any interested persons, and department representatives to present information and discuss questions raised. A final decision shall not be made at an informal meeting.

(2) In rendering an advisory opinion, the department shall consider:

- (a) All material submitted with the request; and
- (b) Comments received in accordance with Section 6 of this administrative regulation.

(3) In rendering an advisory opinion, the department may:

- (a) Consult experts or other individuals with knowledge of the substance of the request;
- (b) Require verification of information; and
- (c) Request additional documentation from the requestor.

Section 5. Issuance or Refusal to Issue an Opinion. The department shall issue an advisory opinion within ninety (90) days after receipt of the request, unless one (1) of the following applies:

- (1) Lack of jurisdiction over any of the questions or issues presented by the request;
- (2) Any of the questions or issues presented are pending before a board, governmental entity, or court of law that may definitively decide the questions or issues;
- (3) Any of the questions presented by the request would be more appropriately resolved in a different proceeding or forum;
- (4) Any of the facts or questions presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate;
- (5) Any of the questions or issues raised in the request become moot;
- (6) The request seeks a determination of the constitutionality of a statute, administrative regulation, or practice;
- (7) Issuance of an opinion will not be in the public interest; or
- (8) The department extends the time period to issue advisory opinion.

Section 6. Written Comments on Request. (1) Any interested person or party may submit written comments concerning a request for an advisory opinion by using the Advisory Opinion Request Form and identifying the AOR number associated with the request.

(2) Written comments shall be submitted by mail or email in the manner outlined in Section 3 of this administrative regulation no later than fourteen (14) business days following the date the request is made public by the department.

(3) The department may extend the written comment period.

Section 7. Reconsideration. (1) The department may revise any advisory opinion if circumstances warrant a revision. In doing so, the department shall issue a revised opinion in accordance with Sections 2 through 6 of this administrative regulation, including an explanation of the rationale for the change or revision of the original opinion.

(2) Any person may request the department to reconsider or revise a advisory opinion using the Advisory Opinion Request Form that identifies the AOR number associated with the advisory opinion.

(3) The request for reconsideration shall be submitted by mail or email in the manner outlined in Section 3 of this administrative regulation no later than ten (10) business days follow-

ing the publication of the opinion and contain the following:

- (a) A clear and concise statement of the grounds for the reconsideration request;
- (b) The proposed conclusion with a summary of the rationale supporting the proposed conclusion;
- (c) Any statute, administrative regulation, document, order, or other statement of law or policy that supports the requested reconsideration with an explanation of the relevance of the material offered; and
- (d) A statement of adverse impact, if any, resulting from the published advisory opinion.

Section 8. Publication of Advisory Opinions. (1) All advisory opinions shall be public. The department shall publish and maintain all advisory opinions. Publication shall be made by making a hard copy available for inspection and by placing the entire opinion on the department's Web site.

(2) An index of all final published advisory opinions shall be maintained by the Department. The index shall include the subject of each opinion, its publication date, and any changes effected by the opinion.

Section 9. Incorporation by Reference. (1) "Advisory Opinion Request Form", July 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, <http://www.abc.ky.gov/>. (44 Ky.R. 709, 937; eff. 12-1-2017.)